NATHAN C. BRUNETTE, OSB No. 090913
nathan.brunette@stoel.com
STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Telephone: 503.224.3380
Facsimile: 503.220.2480

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

OREC PROFESSIONAL MARKETING SYSTEMS, INC., an Oregon corporation, Plaintiff, v. SESAME COMMUNICATIONS, INC., a Washington corporation, Defendant.	No. **COMPLAINT FOR COPYRIGHT INFRINGEMENT** **DEMAND FOR JURY TRIAL**

Plaintiff OREC Professional Marketing Systems, Inc. ("OREC") alleges as follows:

THE PARTIES

1. OREC is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business located at 8295 SW Cirrus Drive, Beaverton, Oregon 97008.

2. Upon information and belief, Defendant Sesame Communications, Inc. ("Sesame") is a corporation organized and existing under the laws of the State of Washington,

with its principal place of business located at 542 First Avenue South, Suite 300, Seattle, WA 98104.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 17 U.S.C. § 501 and 28 U.S.C. §§ 1331, 1332, and 1338. The amount in controversy, including the value of injunctive relief, damages in an amount to be proved at trial, punitive damages, and attorneys' fees, exceeds $75,000 in value.

4. This Court has personal jurisdiction over Sesame because Sesame has purposefully availed itself of and conducted business in the State of Oregon. Sesame has published or caused to be published content that infringes OREC's copyright rights on the website of at least one orthodontics practice located in Portland, Oregon—Baker Orthodontics (http://www.davidbakerortho.com).[1] Sesame is also subject to personal jurisdiction in this Court because Sesame has taken actions intended and/or known to cause harm to OREC—and which have harmed OREC—in the State of Oregon.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1400(a) and 1391(c)(2) because Sesame is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

A. OREC's Business

6. For over twenty-seven (27) years, OREC has created, marketed and sold some of the orthodontic industry's most innovative and effective orthodontic practice marketing and patient education products and materials. Among OREC's most successful and well-recognized products are its orthodontics care pamphlets entitled *Orthodontic Brushing and Flossing Procedures* and *Smiles with Style* (collectively, the "Pamphlets").

[1] The Infringing Content (defined below) is available at: http://www.davidbakerortho.com/brushing-and-flossing.

7. OREC is the sole and exclusive owner of all right, title and interest in and to the Pamphlets, and each of the Pamphlets is the subject of a U.S. copyright registration owned by OREC. Attached hereto as **Exhibit A** are true and correct copies of the copyright registration certificates for the Pamphlets, a copy of *Orthodontic Brushing and Flossing Procedures* and a copy of representative pages of *Smiles with Style*.

8. OREC sells print copies of the Pamphlets to orthodontic practices throughout the country, who then distribute the Pamphlets to their patients as orthodontic and dental care aids. OREC has intentionally declined to make digital versions of the Pamphlets available to its customers, instead choosing to only sell print copies of the Pamphlets. By only selling print copies of the Pamphlets, OREC's customers must re-purchase copies of the Pamphlets from OREC once the customer's inventory is exhausted. If OREC were to sell digital versions of the Pamphlets, OREC's customers would no longer be required to re-purchase copies of the Pamphlets; rather, they could simply make paper copies of the digital versions, or otherwise make available the digital versions on their respective websites.

9. As described below, Sesame has made available digital versions of the Pamphlets on the Internet to Sesame's customers, as well as to third parties who may find these digital versions online, causing irreparable harm to OREC. As a result of such conduct, OREC is losing and will continue to lose control of its valuable and exclusive right to control the copying and distribution of the Pamphlets, as well as its ability to sell print copies of the Pamphlets.

B. The Infringing Activities

10. On information and belief, Sesame is in the business of, among other things, creating, developing, designing, and hosting websites, including websites for orthodontics practices (the "Website(s)").

11. Sesame has created, provided, licensed, published, and/or otherwise caused to be published via the Websites content that infringes OREC's copyright rights in the Pamphlets (the "Infringing Content").

12. The Infringing Content, including both the text and the images, are virtually identical to, and, upon information and belief, was copied or derived from, images and text contained in the Pamphlets.

13. On the majority of the Websites, the Infringing Content is made available through images and text appearing directly on the Websites, as well as through a web link that directs the end user to a printable PDF displaying the Infringing Content. On information and belief, a smaller number of the Websites provide access to the Infringing Content through a web link only.

14. An example of the Infringing Content being made available directly via a Website is attached hereto as **Exhibit B**, which is a true and correct printout of selected content displayed on www.davidbakerortho.com/brushing-and-flossing. An example of the Infringing Content contained in a printable PDF available via a Website is attached hereto as **Exhibit C**, which is a true and correct copy of the PDF generated by clicking on the link titled "Printable Instructions" on www.davidbakerortho.com/brushing-and-flossing.

C. OREC's Cease-and-Desist Letters

15. On February 28, 2017, counsel for OREC sent a letter to Sesame informing Sesame that its reproduction, display, distribution, publication and use of the Infringing Content constituted a direct infringement of OREC's copyright rights in the Pamphlets, and demanded, among other things, that Sesame immediately cease and desist from such activities and deliver to OREC any and all copies of the Infringing Content. Sesame did not respond to this letter, and the Infringing Content has since remained on the Websites.

16. On March 27, 2017, counsel for OREC sent a second letter to Sesame again informing Sesame of its infringement of OREC's copyright rights in the Pamphlets. OREC's March 27, 2017 letter further enclosed OREC's February 28, 2017 letter. Again, Sesame did not respond.

FIRST CLAIM FOR RELIEF

(Copyright Infringement)

17. OREC realleges the allegations set forth above.

18. This claim for copyright infringement is brought pursuant to 17 U.S.C. § 501.

19. OREC is the sole owner of all right, title and interest, including all copyright rights, in the Pamphlets.

20. On or about July 18, 2006, OREC applied for a copyright registration on the "Orthodontic Brushing and Flossing Procedure" Pamphlet, as required by 17 U.S.C. § 411. On or about Dec. 11, 2006, OREC applied for a copyright registration on the "Smiles with Style" Pamphlet, as required by 17 U.S.C. § 411.

21. The U.S. Copyright Office thereafter issued copyright registrations based on the foregoing applications, with the applications being assigned the following registration numbers: *ORTHODONTIC BRUSHING AND FLOSSING PROCEDURE*, Copyright Registration No. TX 6-403-521; and *SMILES WITH STYLE*, Copyright Registration No. TX 6-483-8874.

22. OREC has never authorized Sesame to use the Pamphlets or their content, or granted Sesame any rights whatsoever in the Pamphlets.

23. Sesame has infringed OREC's copyright rights in the Pamphlets under 17 U.S.C. § 106, in that Sesame has copied the images and text contained in the Pamphlets and/or created derivative works thereof, and licensed, provided, published, and/or caused to be published the Infringing Content on the Websites.

24. Sesame has had, at all material times hereunder, access to the Pamphlets, as the Pamphlets are widely sold and distributed by OREC to its orthodontic practice customers, who then distribute the Pamphlets to their respective patients.

25. The Infringing Content is substantially similar to the Pamphlets in that the text and the images shown in the Infringing Content are virtually identical to, and, upon information and belief, were copied and/or derived from, images and text contained in the Pamphlets.

26. Upon information and belief, Sesame's infringement of OREC's copyright rights in the Pamphlets is and at all relevant times has been willful.

27. Pursuant to 17 U.S.C. § 504(b), OREC is entitled to recover actual damages caused by Sesame's infringement of OREC's copyright rights in the Pamphlets, as well as disgorgement of Sesame's profits obtained as a result of Sesame's infringement, in amounts to be determined at trial. In the alternative, OREC, as the owner of U.S. copyright registrations covering the Pamphlets, is entitled to statutory damages per each infringement of the Pamphlets, as set forth in 17 U.S.C. § 504(c).

28. OREC is further entitled to recover its attorneys' fees and costs incurred in bringing this claim pursuant to 17 U.S.C. § 505.

29. Because OREC is being, and unless and until Sesame is enjoined, will continue to be, irreparably harmed by Sesame's ongoing infringement, OREC is likewise entitled to an injunction under 17 U.S.C. § 502 prohibiting Sesame from copying, distributing, publishing, using, licensing, or otherwise violating OREC's copyright rights in the Pamphlets.

Plaintiff demands trial by jury as to all issues so triable.

RELIEF REQUESTED

OREC requests entry of judgment in its favor as follows:

1. An injunction ordering Sesame, and persons under its control, to:

   a. Cease reproducing, displaying, distributing, and/or otherwise using the Infringing Content, or any other content substantially similar to the Pamphlets, including without limitation, by immediately removing the Infringing Content from the Websites;

   b. Deliver to OREC any and all copies of the Infringing Content, whether in digital or other form; and

   c. Provide a written accounting of any and all use of the Infringing Content or any other content substantially similar to the Pamphlets. Such written accounting shall include, without limitation, a written list of all Websites developed, operated, maintained, hosted or for which Sesame is otherwise responsible that have at any time displayed the Infringing Content, and all known physical, electronic, or digital copies or reproductions of the Infringing Content.

2. An order:

a. Finding that OREC has been damaged by Sesame's infringement of OREC's copyright rights in the Pamphlets, and awarding actual or statutory damages in an amount to be proven at trial;

b. Finding that Sesame has profited from its infringement of OREC's copyright rights in the Pamphlets, and ordering disgorgement of Sesame's profits in an amount to be proven at trial;

c. Awarding OREC its reasonable attorneys' fees and costs;

d. Granting pre-judgment and post-judgment interest at the maximum rate provided by law; and

e. Such other and further relief as this Court may deem appropriate under the circumstances.

DATED: May 8, 2017.

STOEL RIVES LLP

/s/ Nathan C. Brunette
NATHAN C. BRUNETTE, OSB No. 090913
nathan.brunette@stoel.com
Telephone: 503.224.3380

Attorneys for Plaintiff OREC Professional Marketing Systems, Inc.